

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 02/01/01?
b. The request was received on 01/31/01.

II. EXHIBITS

1. Requestor:
 - a. Initial TWCC 60 and Letter Requesting Dispute Resolution
 1. UB-92s
 2. EOBs
 3. Medical Reports
 - b. Subsequent Submission of Information
 1. Medical Records
 2. Position statement on the TWCC-60 Disputed Services Table under Tab E
 3. EOBs from other carriers
 - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent:
 - a. Initial Response to the Request for Dispute Resolution
 1. Completed TWCC-60
 - b. 14 day Response
 1. Respondent's position statement
 2. TWCC 60
 3. A copy of the Requestor's additional documentation
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 06/28/02. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 07/01/02. The response from the insurance carrier was received in the Division on 07/15/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute Resolution is contained in Exhibit 3.

III. PARTIES' POSITIONS

1. Requestor: TWCC-60
“The Commission, on review of all data available, determined to define ‘fair and reasonable’ in TWCC Rule 133.1 (a) (8) which clearly defines fair and reasonable as the lesser of usual and customary charges, MAR or negotiated contract. In this case, no MAR or contract is applicable and in the absence of an ASC fee guideline, usual and customary must be paid.”
2. Respondent: Letter dated 07/12/02
“(Requestor) has failed to establish that its charges and the reimbursement it seeks comply with the Texas Workers’ Compensation Act or the TWCC Rules.”

IV. FINDINGS

1. Based on Commission Rule 133.307 (d)(1&2), the only date of service (DOS) eligible for review is 02/01/01.
2. The provider, an ambulatory surgery center, billed a total of \$2,484.24.
3. The carrier reimbursed \$629.22 for the DOS in dispute based on the Requestor’s table. The EOBs submitted with this packet indicate the carrier denied the reimbursement as M-No MAR; reimbursement is based on fees established to be fair and reasonable in your geographical area.
4. The amount in dispute is \$1,855.02, the difference between the billed amount and the amount reimbursed, per the disputed services table.

V. RATIONALE

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (b) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

The provider has submitted reimbursement data. The provider has submitted EOBs from other carriers. In a review of the EOBs submitted, it is noted that the surgical procedure was the same, but the bills vary in price. For example, the OR charge is as high as \$1400.00 and as low as \$800.00.

The initial bill submitted that is in dispute is broken down into operating room services, iv therapy, supplies, recovery room charges, etc. The provider indicated on the bottom of the bill, please see attached report for detailed break out. Charges are for Ambulatory Surgery Ctr. Facility Fees. The Requestor's TWCC-60 separates the individual charges. However, the total is considered the facility fees (what the facility charged for providing the facility, equipment and supplies in order for the surgical procedure to be done).

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement. Even though the provider has submitted EOBs from other carriers to document what it considers fair and reasonable reimbursement, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. The EOBs provide no evidence of amounts paid on behalf of managed care patients of ASCs or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 08th day of August 2002.

Carolyn Ollar, RN, BA
Medical Dispute Resolution Officer
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.